

KABK210009892024



**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C, MUDHOL,
AT: MUDHOL**

PRESENT:

SMT.SARASWATI HOTAKAR,

B.A., LL.M.,

Addl. Civil Judge & JMFC., Mudhol.

Dated this the 27th day of November-2024

O.S.No: 102/2024

Plaintiff/s:

1. Mahalingappa S/o Parappa Puranik and others.

- V/s -

Defendant/s:

1. Sandeep S/o Mahadev Kulkarni.

I.A.No.II

Applicants/Plaintiffs:

1. Mahalingappa S/o Parappa Puranik
Age: 50 years, Occ: Agriculture,
R/o: Belagali, Tal: Mudhol.
2. Mallappa A/S/o Rudrappa Navi.
Age: 40 years, Occ: Agriculture,
R/o: Belagali, Tal: Mudhol.
3. Paramanand S/o Mahalingappa Navi.
Age: 37 years, Occ: Agriculture,

R/o: Belagali, Tal: Mudhol.

- Vs -

Opponent/Defendant:

1. Sandeepa S/o Mahadev Kulkarni.
Age: 50 years, Occ: Agriculture,
R/o: Chikkahall, Belagali, Tal: Mudhol.

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Applicants by Sri.AKO., Advocate
Opponents by Sri. KVK., Advocate

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Orders on I.A.No.II

The applicants/plaintiffs has filed I.A. No. II under Order XXXIX Rule 1 and 2 of CPC praying to issue temporary injunction restraining the defendant from changing the stream direction as shown by letters XY in the plaint hand sketch map in the plaintiff's properties bearing R.S.No 60/4 and 60/5 of Belagali village, till disposal of the suit.

2. In the affidavit filed in support of I.A.II, the plaintiffs have contended that, they have filed the suit for the relief of Permanent injunction against the defendant. The plaintiffs have contended that they are owners and in possession of lands bearing R.S.No 60/4 and 60/5 of village Belagali and defendant is the owner of R.S.No 59 of Belagali village. Further contended that there was a small stream towards eastern portion of R.S.No

59 i.e. defendant's land since from time immemorial. Defendant has recently converted his land bearing R.S.No 59 into non-agricultural purpose and to cause loss to these plaintiffs, defendant has converted the direction of small stream by destroying the same and passed the said small stream in the land of plaintiff bearing R.S.No 60/4 and 60/5 which is shown by letters XY in the plaintiff hand sketch map. Further contended that defendant has illegally trying to change the direction of stream as shown by letters XY in the plaintiff hand sketch map. By doing this illegal act the defendant intends to change the direction of long standing small stream in the lands of plaintiffs and others and in hot hurry to create road in some portion of alleged stream. Considering the act of defendant the plaintiffs along with elders of their locality requested the defendant to not to indulge in such illegal acts, when the defendant did not heed the request then these plaintiffs filed an application before Tahashildar Mudhol and published notice in daily news paper Prajavani on 09/05/2024 under the Head of "Save Stream". Despite of repeated request the defendant has continued his illegal acts and causing obstruction to the plaintiffs as averred in

the plaint. Hence, On these and other grounds prays to allow the application.

3. Per contra, the defendant has filed his detailed written statement and memo to consider the contents of W.S as objections to I.A No II, wherein the defendant in his written statement contended that the suit filed by the plaintiffs is unsustainable both in law and facts and same is liable to be dismissed. Further contended that the defendant who is the owner of land bearing R.S.No 59 of village Belagali has converted the said land into non-agriculture, as per the order of Deputy Commissioner, Bagalkot and in accordance with the same KJP Sage No 47/2023-24 has been approved. Further contended that towards western side of Sy No 59 there is 9 Guntas of Kharab land, which has been clearly narrated that ಸರ್ವೆ ನಂ 59 ರಲ್ಲಿಯ ಕ್ಷೇತ್ರ 9 ಗುಂಟೆ ಒಡಲಿ ಖರಾಬ (ಹೊರತುಪಡಿಸಿ) and also it amounts that including 9 guntas which is phot Kharab land entire KJP map is prepared and it is acted upon and sites are well prepared in view of Karnataka Municipalities Act, now it is in absolute possession of defendant. The lands of one Smt. Kasturi W/o Mallappa Katti who is the owner of land bearing R.S.No 60/6, 60/7 and 60/8 are situated towards western side of Sy No 59 encroached in Sy

No 59 and in respect of that suit bearing O.S.No 250/2018 is pending. These plaintiffs are envious about development of defendant plots and trying to cause hindrances to the plots by taking flimsy and illegal reason of stream. In fact said phot Kharab is A-Kharab as per Karnataka Land Revenue Rules and said phot Kharab which is non-cultivable. Hence, it is designated as phot Kharab and A-Kharab is absolutely belongs to the owner.

Further contended that the said Kharab area which is called by plaintiffs as stream is properly shown in the KJP map, hence question of making any sort of obstruction or devastating etc does not at all arise. The plaint hand sketch map is totally illegal which is in contravention with the Govt map on the prima facie. The plaintiffs illegally claimed that the defendant is in hot hurry to change direction of said stream and he illegally redirecting the stream in Sy No 60/4 and 60/5. This vague allegation and said prayer itself clearly reveals that plaintiffs are intending to causing loss and harass the defendant. As per KJP, Kharab which is wrongly interprets by the plaintiffs as stream is situated perfectly as shown in the KJP map, plots are situated too far away from Kharab area. The plaintiffs be put to strict proof how defendant changing the direction of stream. When

there is proper authority is appointed to look after the same. To avoid this controversy NA order has been passed and KJP map has been prepared. Plaintiffs not at all objected both documents.

Further contended that as the plaintiffs in suit bearing O.S.No 250/2018 by name Katti inadvertently filed the suit through plaintiffs in this suit in order to destroy the valuable property rights of defendant. Already plots were created and the so called stream is not situated within the property of defendant, as said land is converted into non-agriculture thereafter KJP is made, phot Kharab shown 9 guntas towards western side of the land of defendant perfectly in the KJP map. Plaintiffs are misguiding the court on the false pretexts of stream and the defendant is not changing the direction of Kharab area called by plaintiff as stream and question of changing direction or destroying the so called stream never arises as it is already in existence as shown in the KJP map. Hence, the suit of the plaintiff is not maintainable seeking the relief of injunction and other right. On these and other grounds prays to reject the application.

4. I have heard the arguments of learned counsel for the plaintiffs and defendant, defendant's counsel has filed written

arguments on I.A No II. Perused the pleadings and materials on record.

5. The following points would arise for the consideration of this Court:-

:POINTS:

1. Whether the plaintiff has made out prima-facie case against the defendants?
 2. Whether the plaintiff further proves balance of convenience lies in her favour?
 3. Whether irreparable loss causes to plaintiff, if application is not allowed?
 4. What order?
6. Heard the arguments of both sides.
7. I have perused the pleadings, application, objections and documents on record.
8. On careful perusal of records, my findings to the above points are;

Point No.1: In the **Affirmative,**

Point No.2: In the **Affirmative,**

Point No.3: In the **Affirmative,**

Point No.4: As per final order for the following...

: R E A S O N S :

9. POINTS NO.1 to 3:- These points are taken up together for consideration in order to avoid repetition of facts.

10. This is the suit filed by the plaintiffs against the defendant for the relief of permanent injunction restraining him from changing the flow of stream towards the plaintiffs properties bearing R.S.No 60/4 and 60/5 of village Balagali by destroying the small stream existed towards western portion of R.S.No 59 of Belagali village.

11. The plaintiff has contended that they are the owners in possession of R.S. No 60/4 and 60/5 of Belagali village. So also the defendant is the owner of R.S.No 59 of Belagali village. Towards western portion of R.S.No 59 there is a small stream to the extent of 9 gunta's since time immemorial and the defendant by converting his land into non-agricultural purpose he is converted the direction of small stream by destroying the same and trying to change the direction of stream towards their lands bearing R.S. No 60/4 and 60/5 as shown by letters XY shown in the plaintiff hand sketch map. If the defendants succeeds in his illegal

activities then the plaintiffs will suffer irreparable loss that can not be compensated by terms of money.

12. In support of their case the plaintiffs have produced the copy of RTC extract of RS.No 60/4 of village Belagali, Copy of RTC extract of R.S.No 60/5 of village Belagali, Copy of RTC extract of R.S.No 59 of village Belagali, photographs, copy of letter given to Tahashildar Mudhol, original PT sheet and original copy of news paper.

Per contra, the defendant has also produced copy of Govt. KJP map, order copy of Deputy Commissioner, Bagalkot dated 09/05/2022, 28/09/2023 and 29/01/2022.

13. At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

14. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e. injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendant if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury to other side.

15. The plaintiffs contention is that there is a naturally existence of small stream called by Chikk Halla in the land of defendant's land bearing R.S. No 59 of Belagali village, the said stream is situated in the Kharab land to the extent of 9 gunta's in R.S. No 59, the said Chikk Halla is in existence since from the

British era and it is naturally flowing towards north to south direction. Recently the defendant by converting his land R.S.No 59 into non-agricultural purpose is trying to change the direction of flow of small stream by destroying its existing situation towards plaintiff's land as shown by letters XY in the plaintiff hand sketch map. The defendant specifically contended that in R.S No 59, 9 gunta's of pot Kharab land is Khara-A land and it is also mentioned in RTC of R.S. No 59 but nowhere in the said RTC it is shown as stream and as per the KLR Rules, Kharab A land amounts to private land of owner and Kharab B land is Occupied for the Govt. purpose. So the question of stream never comes into picture. Now the defendant is acting as per KJP map and he never touches any stream or small stream as alleged by the plaintiffs. Hence, defendant is not destroying or changing the direction of flow of small stream and he is only acting as per KJP map.

The documents produced by the plaintiffs, at serial No 1 to 7 clearly goes to show that there are the owners in possession of suit properties and on perusal of document RTC of RS. No 59 , defendant is the owner in possession of R.S.No 59 measuring 1A-38G's including 9gunta's of A Kharab land. No doubt there is no

specific mention about the existence of small stream at RS No 59 but there is 9 gunta's of A Kharab land. Further, on perusal of photographs produced by the plaintiffs at this stage it can be observed that some construction work is going to be done by putting pipelines. Further on perusal of copy of application dated 08/05/2024 given by plaintiffs to Tahashildar Mudhol, it can be observed at this stage that the defendant is trying to destroy the existence of small stream situated towards western side of RS. No 59. Further, plaintiffs have also given public notice in Prajavani Daily news paper about the destruction of small stream. No doubt defendant has denied the alleged allegation about destruction of small stream but he has admitted that out of 1A-38G's in R.S. No 59, 9 gunta's is Kharab land and including 9 gunta's the entire land KJP map is prepared and it is acted upon. The plaintiffs are claiming A Kharab land is the stream but no such stream is in existence and no question of obstruction or devastating etc does not at all arise. But on perusal of documents and plaintiff hand sketch map, at this stage it can be seen that there existed a small stream and by perusing the paper publication and the application given to Tahashildar Mudhol, it can be observed that defendant is trying to change the direction

of small stream by destroying its existing situation. Whatever the contentions raised by the defendant, this court can not make any observations in respect of those contentions, as that are to be decided after fulfilled trail. If the temporary injunction is not granted it is the plaintiffs who suffers irreparable loss and balance of convenience leans in their favour. If temporary injunction is not granted, the defendant will definitely continue with his acts that may lead to multiplicity of the proceedings. Hence, with these observations I answer points No 1 to 3 in the Affirmative.

16. Point No.4:- In view of my findings on points No.1 to 3, I proceed to pass the following:-

ORDER

I.A.No.II filed by Plaintiffs under Order XXXIX Rule 1 and 2 of the CPC is hereby allowed.

The defendant or any other person claiming through him are hereby temporarily restrained from changing the direction of small stream towards plaintiffs lands bearing R.S.No 60/4 and 60/5 as shown by letters XY in the plaint hand sketch map.

(Directly dictated to the Stenographer on computer, corrected and then pronounced by me in the Open Court on this **27th day of November, 2024**).

(Smt. SARASWATI HOTAKAR)
Addl. Civil Judge and JMFC,
Mudhol.

